

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
Defendant

v.

APPLE, INC.,

Defendant,
Counterclaimant.

Case No. 4:20-CV-05640-YGR

DECLARATION OF DAVID HAMPTON IN
SUPPORT OF NON-PARTY MICROSOFT
CORPORATION'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF TRIAL
EXHIBITS

I, David Hampton, declare as follows:

1. I am currently the Senior Director of Business Planning and Strategy for Microsoft's Gaming Division at Microsoft Corporation. The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. In my current role at Microsoft, I am responsible for strategy and mergers and acquisitions for Microsoft's gaming division, which includes Xbox, Xbox Game Pass, and Xbox LIVE, among other things. I have been employed with Microsoft in business strategy or finance related roles since January 2003. Based on my work experience, I am familiar with Microsoft's business strategies, sales data, and licensing practices as it relates to the Microsoft's Gaming Business. Microsoft keeps such information confidential to protect itself and its partners from potential harm.

3. I understand that Epic Games, Inc. intends to submit the document designated PX-2477 that contains Microsoft confidential information as a trial exhibit in the above-captioned legal case, and that Apple, Inc. also intends to submit the same document designated DX-5523 as a trial exhibit. I also understand Microsoft is concurrently filing a motion to seal portions of PX-2477, DX-5523, and other potential trial exhibits, and I make this declaration in support of

1 that motion. I further understand that Microsoft is filing a single highlighted and sealed copy of
2 the potential trial exhibits as part of its motion to seal, attached hereto as Exhibit A. I have
3 reviewed the documents designated PX-2477 and DX-5523 and explain below why the document
4 reflects sensitive and highly confidential information that would cause serious harm to Microsoft
5 if publicly released.

6 4. I have reviewed the documents designated PX-2477 and DX-5523, which are a
7 May 2020 powerpoint presentation entitled “CY2019 Game Industry Profit” that was prepared by
8 the Gaming Business Planning & Strategy Team. The document reflects information that was
9 prepared for the purpose of internal discussion for Microsoft’s Gaming Business to help
10 determine Microsoft’s business strategy. As such, this presentation reflects Microsoft’s analysis
11 as to potential market opportunities, including analysis that was based on confidential financial
12 data described below. This type of analysis is sensitive to Microsoft, as it reveals Microsoft’s
13 analysis of potential market opportunities.

14 5. This type of internal analysis with regards to business strategy is information that
15 Microsoft only shares internally on a need-to-know basis. In fact, this information is only shared
16 with senior leaders of Microsoft’s Gaming Business, and select portions are shared with
17 Microsoft’s Senior Leadership Team (e.g., CEO, CFO) and Board of Directors. The information
18 in the document is based on Microsoft’s gaming revenue, profit and loss, and margins
19 information and publicly available data such as Securities & Exchange Commission filings from
20 gaming industry competitors. Although the competitor information contained in the document is
21 publicly available, Microsoft’s analysis of that data reflects significant time, energy, and
22 resources that Microsoft expended to identify potential market opportunities. Such information is
23 extremely valuable to Microsoft’s competitors because it provides an industry-wide analysis of
24 areas of growth and decline on a platform basis and segment basis.

25 6. Microsoft treats its gaming revenue, profit and loss, and margins figures
26 sensitively. The most sensitive of that information in the highlighted portions of the documents
27 designated PX-2477 and DX-5523 primarily reflect two types of data: (1) Microsoft’s non-public
28 revenue, profit and loss, and margin information for its Gaming Business; or (2) gaming industry

1 aggregate revenue, profit and loss, and margin information that includes Microsoft's non-public
2 information. Disclosure of the highlighted information will allow Microsoft's competitors to
3 know or deduce Microsoft's non-public revenue, profit and loss, and margin information for its
4 Gaming Business. These calculations and figures reflect Microsoft's business strategy regarding
5 potential market opportunities, that if revealed would undermine Microsoft's competitive
6 advantage.

- 7 a. The highlighted portions of pages 3, 13-14, 16-17, 27, 31-32, 37, 39, 50-52
8 reflect Microsoft's non-public revenue, profit and loss, and/or margin
9 information by gaming market segment (e.g., console vs. PC). Disclosure of
10 the highlighted information at the above-mentioned pages will allow
11 Microsoft's competitors to price their competing products in such a way to
12 undercut Microsoft's sales and existing market share.
- 13 b. The highlighted portions of page 23, 25-26, 50-51, 58-60, and 65 also reflect
14 Microsoft's non-public revenue, profit and loss, and/or margin information for
15 Microsoft's software & services and overall gaming businesses. Microsoft's
16 revenue, profit and loss, and/or margin information is visually presented
17 alongside its competitors' respective information in a manner that would reveal
18 Microsoft's non-public information if Microsoft's information only was
19 redacted. Disclosure of the highlighted information at the above-mentioned
20 pages will allow Microsoft's competitors to estimate with reasonable accuracy
21 Microsoft's revenue, profit and loss, and/or margin and price their competing
22 products in such a way to undercut Microsoft's sales and existing market share.
- 23 c. The highlighted portions of pages 3, 6-9, 10-11, 13-14, 16-17, 19-21, 31-32,
24 and 52-55, 57 reflect Microsoft's non-public revenue, profit and loss, and/or
25 margin information presented alongside Microsoft's competitor information by
26 competitor and in the aggregate. If the highlighted information were publicly
27 disclosed, Microsoft's competitors could reverse engineer or deduce
28 Microsoft's revenue, profit and loss, and/or margin information related to

1 Microsoft's Gaming Business using the aggregate and competitor information.
2 Microsoft's competitors would use that information to price their competing
3 products in such a way to undercut Microsoft's sales and existing market share.

4 7. The highlighted portions on pages 37, 40 and 41 reflect Microsoft's methodology
5 for calculating revenue for its own and competing platforms. Because those methodologies rely
6 on using Microsoft's actual revenue and profits as calculation assumptions, a competitor could
7 use the disclosed revenue and profits or other publicly known figures to deduce Microsoft's
8 confidential gaming revenue, profit and loss, and/or margins figures on page 37 and elsewhere in
9 the document. If disclosed, these figures would reveal both Microsoft's underlying confidential
10 revenue and sales, as well as Microsoft's confidential business strategy regarding potential market
11 opportunities, which would undermine Microsoft's competitive advantage.

12 Executed this 30th day of April 2021 in Seattle, Washington.

13
14 /s/ David Hampton
David Hampton
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION

I, David P. Chiappetta, am the ECF user whose ID and password are being used to file the above Declaration. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that David Hampton has concurred in the aforementioned filing.

/s/ David P. Chiappetta
David P. Chiappetta